

**FILED**

**NOV 26 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JAN J. WIDMER, JR.,

Petitioner - Appellant,

v.

BRIAN BELLEQUE,

Respondent - Appellee.

No. 06-35797

D.C. No. CV-04-01890-MRH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Michael R. Hogan, District Judge, Presiding

Submitted November 13, 2007<sup>\*\*</sup>

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges

Jan Widmer, an Oregon state prisoner, appeals the denial of his habeas corpus petition under 28 U.S.C. § 2254 on the ground that his claims were procedurally barred. He contends that state post-conviction counsel's alleged

---

<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

errors in failing properly to investigate the case and in filing a “no-merit” brief in the Oregon Court of Appeals establish cause for his procedural default. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Because there is no constitutional right to counsel in post-conviction proceedings, post-conviction counsel’s constitutional ineffectiveness is not considered cause for the purpose of excusing a procedural default. *Coleman v. Thompson*, 501 U.S. 722, 757 (1991); *Custer v. Hill*, 378 F.3d 968, 974 (9th Cir. 2004).

Widmer contends that due to post-conviction counsel’s errors, counsel did not act in furtherance of the litigation, and therefore ceased to act as Widmer’s agent. This contention is foreclosed by *Coleman*. See 501 U.S. at 753-54 (1991) (holding that attorney error does not end agency relationship).

Widmer also contends that the state’s failure to appoint “suitable counsel,” as required by Or. Rev. Stat. § 138.590(4), makes the state responsible for his procedural default. This contention lacks merit because only a violation of the federal right to effective assistance of counsel amounts to cause. See *Bonin v. Vasquez*, 999 F.2d 425, 430-31 (9th Cir. 1993).

**AFFIRMED.**